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PARTNERSHIP—ACTION—SERVICE OF PROCESS ON ONE PARTNER.—In an action of trespass against a partnership service was had on one partner only. Judgment for want of appearance was entered by the trial court. *Held,* that said judgment was binding on the firm assets. *Walsh* v. *Kirby* (1910), — Pa. St. —, 77 Atl. 452.

The weight of authority is that at *law*, in the absence of a statute, service on each partner is a prerequisite to judgment against the firm: *Rice* v. *Doniphan,* 4 B. Mon. 123; *Faver* v. *Briggs,* 18 Ala. 478; *Demoss* v. *Brewster,* 4 Sm. and M. 661; *Peoples Nat. Bank* v. *Hall,* 76 Vt. 280; *Adam* v. *Townend,* 14 Q. B. D. 103; *Feder* v. *Epstein,* 69 Cal. 457; see also 30 CYC. 569. It must be borne in mind that there are now statutes in many states allowing such a judgment as in the principal case. But the Pennsylvania court did not place the decision on a statute. In that state by a long line of decisions one partner has implied authority to confess judgment against the firm. (See *Boyd* v. *Thompson,* 153 Pa. St. 78). The court reasons that if a judgment confessed by a partner is binding, then the partnership should be bound in an adverse proceeding when service is had on that partner. This result seems sound when it is granted that one partner has implied authority to confess judgment against the firm. But this authority is peculiar to Pennsylvania and not in accord with the weight of authority; MECHEM, ELEMENTS OF PARTNERSHIP, § 179 and cases cited; CLEMENT BATES LAW OF PARTNERSHIP, § 377 and cases cited; *Hall* v. *Lanning,* 91 U. S. 160; *Davenport Mills Co.* v. *Chambers,* 146 Ind. 156; *Burr* v. *Mathers,* 51 Mo. App. 470; *Remington* v. *Cummings,* 5 Wis. 138. Hence it would seem that in the absence of a statute, the decision upon facts like those in the principal case would be different, or at least would be placed on some other ground, in that class of states (and that class includes nearly all of those that have passed on the question) which deny the implied authority of one partner to confess judgment against the firm.

PLEADING—TEST OF CAUSE OF ACTION—INJURIES TO PERSON AND TO PROPERTY.—Plaintiff Ochs while riding in his wagon was run down by a trolley car of defendant company. He was injured in his person, his horse was injured and his wagon damaged. He recovered judgment in a former suit for $200.75 for injuries to his horse and wagon. In present suit for injuries to his person, *held,* that judgment in the first suit is a complete bar to judgment in the second. *Ochs* v. *Public Service Ry. Co.* (1910), — N. J. —, 77 Atl. 533.

The courts have divided on the question whether when a single tortious act of defendant injures both the property and person of plaintiff, the latter has one or two causes of action, which he may bring separately. *King* v. *Chi. etc. R. Co.,* 80 Minn. 83, 82 N. W. 1113, well represents the view of the majority, applying the test that the negligence act determines the cause of action, the injuries to person and property being regarded only as separate items of damage resulting therefrom. The decision in the principal case places New Jersey in the list of states adopting the Minnesota rule. New York in *Reilly* v. *Sicilian Asphalt Paving Co.,* 170 N. Y. 40, 62 N. E. 772,

has taken the English view established in *Brunsden* v. *Humphrey,* 14 Q. B. D. 141, holding that the right of person and the right of property are distinct and inherently different primary rights and that causes of action arise when these rights are violated and damage results whether the violation is caused by one or more tortious acts. The Minnesota test followed in *Ochs* v. *Ry. Co.* (supra) was adopted in that court as a rule of economy and expediency in bringing litigation to an end. The English and New York views have recognized that the rights of person and property are quite different in character as shown by the statutes of limitation affecting them and the statutes providing what causes of action shall survive and have not allowed a rule of economy to control.

RAILROADS—VIOLATION OF SPEED ORDINANCE—"LAST CLEAR CHANCE DOCTRINE."—The husband of the plaintiff was killed while employed as a freight conductor on D's railway. The decedent was run over by a fast passenger train which was exceeding the lawful speed limit, while he was standing on the main line of D's road, checking off the cars of his train lying on an adjoining side-track in the yards. The deceased knew the train was due but did not hear it or its signals because of the surrounding yard noise, and of his application in checking his train. The engineer of the passenger realized the state of affairs and tried to stop the train but was unable to do what could have been done if the speed had been legal. *Held,* that the deceased was negligent in going on the main line with a fast train expected, and with so much noise existing from the presence of many switch engines, but that his negligence was only a prior condition while D. had the "last clear chance" to avoid the accident, the proximate cause of which was the violation of the speed ordinance. *Neary* v. *Northern Pac. Ry. Co.* (1910), — Mont. —, 110 Pac. 226.

The weight of authority is to the effect that a violation of the speed rate regulated by statute or ordinance is negligence per se. *Chi. etc. Ry. Co.* v. *Mochell,* 193 Ill. 208, 86 Am. St. Rep. 318; *Schmidt* v. *Mo. Pac. Ry. Co.,* 191 Mo. 215, 3 L. R. A. (N. S.) 196; *Brown* v. *Chi. etc. R. Co.,* 109 Wis. 384; *Ga. Cent. R. Co.* v. *Tribble,* 112 Ga. 863. In the principal case this was stated to be the law of Montana. However in some jurisdictions un unlawful rate of speed is merely evidence of negligence. *Grand Trunk Ry. Co.* v. *Ives,* 144 U. S. 408; *L. S. etc. R. Co.* v. *Johnston,* 25 O. Cir. Ct. 41. The application of the "last clear chance doctrine" is not an abrogation of the contributory negligence rule, but merely affords a means of holding the defendant liable if his negligence is the proximate cause of the injury while that of the plaintiff is only a remote cause. *Richmond* v. *S. V. R. Co.,* 18 Cal. 351; *Button* v. *Hudson R. R. Co.,* 18 N. Y. 248; *Nashua, I. & S. Co.* v. *W. & N. R. Co.,* 62 N. H. 159; *Smith* v. *N. & S. R. Co.,* 114 N. C. 728. The court in the principal case points out very clearly that the negligence of the deceased was antecedent in its nature and not continuous and concurrent with that of the defendant and shows that the presence of the decedent on the main track with knowledge of a fast train about due, and of the difficulty of hearing it because of the surrounding noise was only a prior condition of affairs re-